

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Nine-F Ranch Co. Inc.

**CASE 40A-0441-R-2022**

40A 112903-00

40A 112905-00

40A 112908-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claim 40A 112903-00, 40A 112905-00, and 40A 112908-00  
appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin

40A). These claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into Water Court Case 40A-0441-R-2022 on June 13, 2022. The consolidation order referred Claimant to the Lewistown Regional Office of the DNRC for issue remark resolution.

On October 7, 2022, the Court received a DNRC Memorandum containing discussion and recommendations related to the issue remarks on these claims.

### **FINDINGS OF FACT**

1. Claim 40A 112903-00 appeared with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Claims 40A 112905-00 and 40A 112908-00 each appeared with the following issue remark:

IT APPEARS THE MARTINSDALE INLET CANAL IS THE INITIAL DIVERSION FOR THIS CLAIM. DNRC IS UNABLE TO DETERMINE IF SECONDARY DIVERSIONS ARE INVOLVED.

3. According to the DNRC Memorandum, Water Resources Specialist Michael Melin met with Russel Berg, representative of Claimant, to gain information related to the above-captioned claims.

4. Claim 40A 112903-00 is for irrigation out of “Clendenin Spring.”

5. Mr. Melin included the following discussion regarding Claim 40A 112903-00 in the DNRC Memorandum:

During the meeting with Mr. Berg the headgate for the Clendenin Springs and issue remark were discussed. Mr. Berg stated that the Clendenin springs current and historic Point of Diversion at the NESENE is the wrong Legal Land Description. He stated that the springs start in the SWSENE of Section 8 and the actual headgate structure that he controls the water with is located at the SWSWNW of Section 9, T8N, R12E. Mr. Berg explained that the water from the Clendenin Spring flows into the Olson Ditch which then feeds the irrigation from a headgate. Mr. Berg had taken GPS coordinates for the location of the Clendenin Spring Headgate. The coordinates Mr. Berg gave were 46 28' 8" North and 110 14' 17" West. These coordinates for the headgate do not locate to the NESENE of Section 8, T8N, R12E, these coordinates locate to the SWSWNW of Section 9, T8N, R12E. DNRC Maps 1 and 2 show where the location of these coordinates can be found on the Unnamed Tributary of the Musselshell River, otherwise known as Clendenin Springs.

6. The DNRC recommends changing the point of diversion to SWSWNW of Section 9, T8N, R13E to resolve the issue remark.

7. The point of diversion of Claim 40A 112903-00 should be described as SWSWNW of Section 9, T8N, R13E.

8. Claims 40A 112905-00 and 40A 112908-00 are for irrigation out of the South Fork of the Musselshell River.

9. Mr. Melin states that the claimed point of diversion of these claims is for the Martinsdale Reservoir Inlet Canal. Mr. Melin also includes the following discussion in the Memorandum:

At the meeting with Mr. Berg at the Nine-F Ranch we were able to resolve the PDIS issue remark. He mentioned that the original Point of Diversion is correct at the SWNWNE of Section 15, T8N, R11E and that the water historically comes from the South Fork of the Musselshell River and is delivered by the Martinsdale Inlet Canal. Mr. Berg stated that there has indeed been a second Point of Diversion and headgate. He stated that the headgate historically diverted water from the Martinsdale Inlet Canal and delivers it through a supply ditch to the Place of Use in Section 8 and Section 17. Mr. Berg stated that he calls the ditch the "Twin Pipes Ditch" which might be a colloquial name given by ranchers and water users in the area. DNRC Maps 3 and 4 show the second Point of Diversion, or headgate location, is at the SWNENW of Section 13, T8N, R11E. DNRC Map 5 and 6 are historical aerial Photos from the Water Resource Survey (Photo MA-40 38) showing this diversion from the Martinsdale Inlet Canal.

10. A secondary point of diversion should be added to both Claims 40A 112905-00 and 40A 112908-00 with a legal land description of SWNENW of Section 13, T8N, R11E and a period of diversion of April 15 to October 4.

11. The issue remarks should be removed from the above-captioned claims.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

### **CONCLUSIONS OF LAW**

1. The change in point of diversion to Claim 40A 112903-00 as described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence. The addition of a secondary point of diversion to Claims 40A 112905-00 and 40A 112908-00 is sufficiently supported by the evidence in the record.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove the issue remarks from the above-captioned claims.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Nine-F Ranch Co. Inc.  
PO Box 27  
Martinsdale, MT 59053

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 112903-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** NINE-F RANCH CO INC  
PO BOX 27  
MARTINSDALE, MT 59053

**Priority Date:** MAY 26, 1892

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**Flow Rate:** 1.63 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 43.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF MUSSELSHELL RIVER  
**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	9	8N	12E	WHEATLAND

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	43.00		S2NW	9	8N	12E	WHEATLAND
<b>Total:</b>	43.00						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

112903-00	112904-00	112905-00	112906-00	112907-00	112908-00
112909-00	113097-00	145842-00	145843-00		

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 112905-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** NINE-F RANCH CO INC  
PO BOX 27  
MARTINSDALE, MT 59053

**Priority Date:** MAY 2, 1901

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 10.25 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 305.00

**Source Name:** SOUTH FORK MUSSELSHELL RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	15	8N	11E	MEAGHER
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 1						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> MARTINSDALE INLET CANAL						
2 - SECONDARY		SWNENW	13	8N	11E	MEAGHER
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 4						
<b>Diversion Means:</b> HEADGATE						
<b>Period of Use:</b> APRIL 15 TO OCTOBER 1						

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	108.00		SW	8	8N	12E	WHEATLAND
2	46.00		S2NE	17	8N	12E	WHEATLAND
3	151.00		NW	17	8N	12E	WHEATLAND
<b>Total:</b>	305.00						

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**Remarks:**

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112903-00	112904-00	112905-00	112906-00	112907-00	112908-00
112909-00	113097-00	145842-00	145843-00		



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 112908-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** NINE-F RANCH CO INC  
PO BOX 27  
MARTINSDALE, MT 59053

**\*Priority Date:** MARCH 28, 1904

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** 10.25 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 305.00

**Source Name:** SOUTH FORK MUSSELSHELL RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	15	8N	11E	MEAGHER

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** MARTINSDALE INLET CANAL

2 - SECONDARY		SWNENW	13	8N	11E	MEAGHER
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**Period of Diversion:** APRIL 15 TO OCTOBER 4

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	108.00		SW	8	8N	12E	WHEATLAND
2	46.00		S2NE	17	8N	12E	WHEATLAND
3	151.00		NW	17	8N	12E	WHEATLAND

**Total:** 305.00

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